IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.1161 OF 2006

Bharat D. Gavkar. ...Petitioner.
Vs.
Smt.Chhaya Mohan Patkar. ...Respondent.
....
Mr. Sandesh D. Patil for the Petitioner.
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CORAM : DR.D.Y.CHANDRACHUD, J.

June 6, 2006.

P.C.

A decree for eviction was passed by the Trial Court on the ground that the Petitioner had acquired suitable alternative residential accommodation and on the ground of non-user of the suit premises since August 1992. The decree has been affirmed in appeal by the Additional District Judge.

On behalf of the Petitioner, the first submission is that the Petitioner and his wife were joint tenants in respect of the suit premises which consist of a tenement admeasuring 13' x 12' together with a veranda in Chhya Mohan Patkar Chawl at Shastri Nagar, Majiwada Village, Thane. Now in so far as the plea of joint

tenancy is concerned, the Learned Trial Judge as well as the Appellate Court were, to my mind, justified in rejecting the contention on the basis of the evidence of the Petitioner himself. In the course of his Examination-in-Chief, the Petitioner deposed thus:

> "In 1972 I took this room on rent at the rate of Rs.35/- p.m. ... When I took the suit room on rent, it was under Grampanchayat. Mohan Patkar would collect the rent from me."

The Petitioner, however, sought to produce three rent receipts Exhs.41, 42 and 43 which were issued in the name of his wife. However, in the course of his cross-examination, the Petitioner admitted that the landlord had accepted him as a tenant; that since the inception of tenancy, he paid all rents as well as taxes and that the entire transaction had taken place between him and the landlord. In the face of this evidence, it was for the Learned Trial Judge to determine as to whether the Petitioner had established that there was a joint tenancy. The Learned Trial Judge, having regard to the admission of the Petitioner in the course of his Examination-in-Chief as well as the cross-examination was

justified in holding that the stray rent receipts, Exhs.41, 42 and 43 would not establish a case of joint tenancy. Eventually, as the Appellate Court notes in paragraph 16 of its order, the landlord produced several rent receipts at Exh.37 in which only the surname Gavkar was mentioned. Moreover, the admissions of the Petitioner that the landlord has accepted him as a tenant, that the transaction was carried out by the landlord with him and that the rent since inception has been paid by the Petitioner clearly show that the Petitioner was the tenant. Consequently, there is no merit in the challenge to the decree on the ground that the suit must fail for want of impleadment of the wife as a party thereto. Counsel appearing on behalf of the Petitioner relied upon a judgment of the Supreme Court in **Textile Association (India) Bombay Unit v. Balmohan Gopal Kurup,** (1990) 4 SCC 700. That however, was a case where the premises were in the occupation of Gopal Kurup who left behind his widow, two sons and daughters and after the death of the original tenant, the landlord filed a suit for eviction in which the First Respondent was not impleaded as a party. The mother and brother of the First Respondent alone were impleaded as parties and an ex-parte decree came to be passed in the suit. The First Respondent instituted a suit in which all the Courts

thereupon concurrently held that the First Respondent who was living with his father at the time of his death, was also a tenant and that the decree would not, therefore, bind him. The Supreme Court held that there was a finding that the Respondent was as much a tenant as the mother and the other brother and that being the position, the ex parte decree for eviction obtained against his mother and brother without impleading him, would have to be set aside. The decision, therefore, rested on facts which are clearly distinguishable. In that case, it could not be disputed that the First Respondent was as much a tenant as his mother and brother. Upon the finding that the First Respondent was a tenant, a decree for eviction that was passed without impleading the First Respondent had to be set aside. In contrast, in the present case, the Petitioner sought to set up a plea of joint tenancy which has been disbelieved by both the Courts below and a finding of fact that has been arrived at that the Petitioner alone was a tenant. At the cost of repetition, it would be necessary to record that the Petitioner admitted in the course of cross-examination that it was he who was accepted as a tenant by the landlord and that he himself paid the rent to the landlord.

In so far as the merits are concerned, it emerges from the record that the Petitioner acquired suitable alternative accommodation at Konkan Co-operative Housing Society, Vartak Nagar. The voters' list shows the name of the Petitioner together with his wife at the place where the alternative accommodation is located. It was duly established that a Gas connection has been obtained there. The Petitioner admitted that the new premises were for residential purposes and with all the requisite facilities. Quite correctly the Petitioner also admitted that it was true that there was no reason for him to reside separately from his wife and children. The concurrent findings of fact, therefore, are amply borne out from the record. No case for interference is made out. The Petition is dismissed.

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